

Mental Health Services Oversight and Accountability Commission

Final Statement of Reasons Prevention and Early Intervention Programs AMENDMENTS TO PREVENTION AND EARLY INTERVENTION REGULATIONS

UPDATE OF INITIAL STATEMENT OF REASONS

Below is an update of the information in the Initial Statement of Reasons published on August 11, 2017.

SECTION(S) AFFECTED: 3560, 3560.010, 3560.020, 3705, 3726, 3735, 3750 and 3755

Section 3560.

No changes were made to the text of this section.

Section 3560.010.

No changes were made to the originally proposed text of subdivision (a).

In subdivision (b)(3)(B) new paragraphs 1. and 2. were added to the original text related to reporting requirements for each Access and Linkage to Treatment Strategy or Program. The new paragraphs differentiate the reporting requirements for referrals. Paragraph 1. requires reporting of the number of individuals with serious mental illness referred to treatment that is provided, funded, administered, or overseen by county mental health programs. Paragraph 2. requires reporting of the number of individuals with serious mental illness referred to treatment that is not provided, funded, administered, or overseen by county mental health programs. During public comment the argument was made that even if the county did not exercise any authority over a non-county program to which a person might be referred, the county was still cognizant of a referral made to those programs. Stakeholders believed that for purposes of documenting Access and Linkage to Treatment, information regarding the number of referrals to non-county program as well as referrals to county programs was necessary to better understand penetration of services/program.

In subdivision (b)(3)(C)-(E) changes were made to the original text to clarify that the reporting requirements in (C), (D), and (E) apply only to referrals to treatment that is provided, funded, administered or overseen by the county. Because public comment identified two types of potential referrals for Access and Linkage to Treatment and a change to the regulation was made to reflect this, it then became necessary for this regulation to quantify which data would be required for counties to report for those entities that fell within its purview.

No changes were made to the originally proposed text of (b)(4)-(b)(8).

No changes were made to the originally proposed text of subdivision (c).

In subdivision (d) changes to the originally proposed text consisted of deleting the text and adding new text that lists the demographic information a county is required to collect from a minor younger than 12 years of age. During public comment, numerous stakeholders indicated that information about a

minor's race, ethnicity, primary language, disability status, and gender is known and should be collected to better understand who is being served and to help reduce disparities in access to and services for mental health. Further, stakeholders suggested that information that cannot be obtained directly from the minor may be collected from the minor's parent or legal guardian. There was significant debate during the statewide implementation meetings about whether minors should be asked about their sexual orientation and gender identity especially if they had not had such a conversation with their parent or guardian. The regulation was changed to require counties to collect demographic data, except for sexual orientation, current gender identity and veteran status.

No changes were made to the originally proposed text in subdivision (e).

Section 3560.020.

No changes were made to the originally proposed text in this section.

Section 3705.

No changes were made to the originally proposed text in this section.

Section 3726.

No changes were made to the originally proposed text of subdivision (a)

In subdivision (b), which defines Access and Linkage to Treatment Program, the originally proposed text was deleted and no modified text was added in order to be consistent with the new paragraph 2. of subdivision (b)(3)(B) of section 3560.010.

No changes to the originally proposed text were made to subdivisions (c), (d) or (e).

Section 3735.

In subdivision (a)(1)(A), which defines Access and Linkage to Treatment Strategy, the originally proposed text was deleted and no modified text was added in order to be consistent with the changes in the definition of Access and Linkage to Treatment Program in subdivision (b) of section 3726.

No other changes to the originally proposed text were made.

Section 3750.

Subdivision (k) was modified to correct a typographical error in the cross reference to subdivision (o) of section 3755. The original text referenced subdivision (o)(2) but the correct reference is subdivision (o)(3).

No other changes were made to the originally proposed text in this section.

Section 3755.

No changes were made to the originally proposed text in this section.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

RESPONSE TO PUBLIC COMMENTS

Public comment summaries and responses for the initial 45-day comment period and public hearing are included as part of this document and can be found in the rulemaking binder. Below is a summary of those comments, the responses, and the action taken. The comments and the recommended responses and action were presented to the Mental Health Services Oversight and Accountability for review and adoption at the Commission meeting held on November 16, 2017. The documents presented at the Commission meeting are all hereby incorporated by reference into this document.

Section 3560.010(b)(3)(B): Comment Regarding Referral Tracking Requirements

One comment relevant to the July 2017 proposed amendment to limit referral tracking to county programs was received. The comment stated that a county should be expected to track the referrals to any services or supports even if the referral is outside the county system. The comment acknowledged that it is likely a county would have difficulty tracking the number of individuals who followed through on the referral for those programs that not within the county system. (Comment from California Alliance.)

Response and Action Taken: Modify the text consistent with the above comment. Information to whom the county is referring the individual is information generated by the county program making the referral. The tracking of whether an individual followed through with the referral should remain limited to those referrals to providers within the county system.

The new subdivision (b)(3) of section 3560.010 would read as follows:

- (3) For each Access and Linkage to Treatment Strategy or Program the County shall report:
 - (A) The Program name
 - (B) Number of individuals with serious mental illness referred to ~~treatment and the kind of treatment to which the individual was referred:~~
 - 1. Treatment that is provided, funded, administered, or overseen by county mental health programs and the kind of treatment.
 - 2. Treatment that is not provided, funded, administered, or overseen by county mental health programs and the kind of treatment.
 - (C) For referrals to treatment that is provided, funded, administered, or overseen by county mental health, the number of individuals who followed through on the referral and engaged in treatment, defined as the number of individuals who participated at least once in the Program to which they were referred.
 - (D) For referrals to treatment that is provided, funded, administered, or overseen by county mental health, the average duration of untreated mental illness as defined in Section 3750, subdivision (f)(3)(A) and standard deviation.
 - (E) For referrals to treatment that is provided, funded, administered, or overseen by county mental health, the average interval between the referral and participation in treatment, defined as participating at least once in the treatment to which referred, and standard deviation.

- (F) "Referral" as used in this subdivision means the process by which an individual is given a recommendation in writing to one or more specific service providers for a higher level of care and treatment. Distributing a list of community resources to an individual does not constitute a referral under this subdivision.

Sections 3726(b) and 3735(a)(1)(A) need to be modified in order to be consistent with the above changes to section 3560.010.

Section 3726(b) would be amended to read:

- (b) "Access and Linkage to Treatment Program" means a set of related activities to connect children with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, and adults and seniors with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, as early in the onset of these conditions as practicable, to medically necessary care and treatment, including, but not limited to, care provided, ~~funded, administered, or overseen~~ by county mental health programs.

Section 3735(a)(1)(A) would be amended to read:

- (a) The County shall include all of the following Strategies as part of each Program listed in Sections 3710 through 3730 of Article 7:
- (1) Be designed and implemented to help create Access and Linkage to Treatment.
- (A) "Access and Linkage to Treatment" means connecting children with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, and adults and seniors with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, as early in the onset of these conditions as practicable, to medically necessary care and treatment, including, but not limited to, care provided, ~~funded, administered, or overseen~~ by county mental health programs.

Section 3560.010(d): Comments Regarding Demographic Reporting Requirements for Children Younger Than 12 Years of Age

Ten (10) comments relevant to the July 2017 proposed amendments eliminating reporting requirements of demographic information from minors under 12 years old were received. Those comments fall into one of the following three categories:

- (1) Delete the entire proposed amendment and require counties to report all (8) categories currently required demographic information, including sexual orientation and gender identity from all individuals including children under 12 years old. (Comment from California Alliance.)
- (2) Modify the proposed amendment to require counties to report all required information about children under 12 and clarify that the information would be collected from the parents or other legal caretakers to the extent permissible under state/federal privacy laws. (Comment from Young Minds Advocacy.)
- (3) Modify the proposed amendment to require counties to report only certain demographic information from children under 12. Nine organizations/individuals support collecting all the demographic information except (a) sexual orientation, and (b) current gender identity. Two of these organizations also recommend the regulations explicitly state that counties are not

required to report on the veteran status of children under 12. (Comments from REMHDCO, California LGBT Health & Human Services Network, NorCalMHA, California Pan-Ethnic Health Network, California Health+ Advocates, Muslim American Society Social Services Foundation, California Chapter of the National Association of Social Workers, Richmond Area Multi-Service, and Laurel Benhamida. Also testimony of Poshie Walker of NorCalMHA, Stacie Hiramoto of REMHDCO, Elizabeth Oseguera of California Health+ Advocates, Mandy Taylor of California LGBT Health & Human Services Network, and Kiran Savage of California Pan-Ethnic Health Network.)

Response and Action Taken: Delete proposed subdivision (d) of section 3560.010 and replace it with text consistent with the comments listed in number (3) above to read as follows:

- (d) Except for sexual orientation, current gender identity, and veteran status, a county shall collect the demographic information required under subdivision (b)(5) of this section from a minor younger than 12 years of age. Information that cannot be obtained directly from the minor may be obtained from the minor's parent, legal guardian, or other authorized source.

Section 3560.010(e): Comments Regarding Demographic Reporting Requirements for Counties With Population Under 100,000

One comment relevant to this proposed amendment was received. That comment recommends deleting the proposed amendment and returning to the 2015 version of the regulations on this issue. The comment states that the July 2017 proposed amendment would make it challenging for the public to compare data on counties or regions to each other and to measure the effectiveness of each individual PEI program for the 23 counties that qualify under this provision. (Comment from Young Minds Advocacy.)

Response and Action Taken: The Commission rejects the comment for the same reasons the Commission initially adopted the proposed amendments. No action/changes.

Section 3705(a)(A) and (a)(B): Comments Regarding the Opt-out of Access and Linkage to Treatment Program Requirement for Counties With Population Under 100,000

One comment relevant to this proposed amendment was received. That comment recommends deleting the proposed amendment and returning to the 2015 version of the regulations on this issue. The comment states that counties should not be exempt from any of the five required programs. (Comment from California Alliance.)

Response and Action Taken: Reject the comment for the same reasons the Commission initially adopted those proposed amendments. No action/changes.

Comments Not Related To the Proposed Amendments

Comments not relevant to the proposed rulemaking were received. Those comments can be found in the rulemaking file. These comments and the recommended responses and action were presented to the Mental Health Services Oversight and Accountability for review and adoption at the Commission

meeting held on November 16, 2017. The documents presented at the Commission meeting are all hereby incorporated by reference into this document.

Response and Action Taken: The comments are not related to the specific proposed amendments and are not relevant. No action/changes.

DOCUMENTS INCORPORATED BY REFERENCE

None

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS.

No alternative were proposed to the Mental Health Services Oversight and Accountability Commission that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The Mental Health Services Oversight and Accountability Commission has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing statutory policy or other provision of law.

The proposed regulatory action adopted by the Mental Health Services Oversight and Accountability Commission is the only regulatory provisions identified by the Commission that accomplishes the goal of addressing several challenges faced by California' county behavioral health agencies with complying with some of the current regulations for the administration of the Prevention and Early Intervention component of the Mental Health Services Act. Except as set forth and discussed in the summary and responses to comments, no other alternative have been proposed or otherwise brought to the Commission's attention.